

A PARENT'S GUIDE TO FREQUENTLY ASKED QUESTIONS ABOUT SPECIAL EDUCATION DUE PROCESS COMPLAINTS

1. What is a due process complaint?

A due process complaint is a formal complaint regarding the identification, evaluation, educational placement, or the provision of a free appropriate public education for a student with a disability or suspected of having a disability, which may result in a due process hearing.

2. Who can file a due process complaint?

A parent or a public agency¹ may file a due process complaint.

3. How do I file a due process complaint?

It is preferred that you file your due process complaint using the *Request for Mediation and Due Process Complaint* form, however, any written request that includes all the required information shall initiate the due process complaint process. You may obtain a form by calling or writing to the public agency responsible for the student's education; the Office of Administrative Hearings (410-229-4294); or the Maryland State Department of Education's Division of Early Intervention and Special Education Services (410-767-7770). The form is also available on the websites for the Office of Administrative Hearings at oah.state.md.us and the Maryland State Department of Education at marylandpublicschools.org (go to the Division of Early Intervention and Special Education Services page, then the Complaint Investigation and Due Process Branch page).

4. Where do I send my due process complaint?

Your due process complaint must be sent to the public agency responsible for the student's educational program **and** to the Office of Administrative Hearings. The form may be sent by mail, fax, or hand-delivery. The Office of Administrative Hearings does not accept due process complaints by email; its address is 11101 Gilroy Road, Unit E/Clerk's Office, Hunt Valley, MD 21031; the fax number is 410-229-4277. The Maryland State Department of Education will not forward a due process complaint to the Office of Administrative Hearings or the public agency.

5. What is the time limit for filing a due process complaint?

A due process complaint must be filed within two (2) years of the date you knew, or should have known, about the alleged action that is the reason for the complaint. There are limited exceptions to this timeline; please refer to the procedural safeguards document you received from the public agency for additional information.

¹ The term, public agency, in this document refers to the local school systems or other public agencies responsible for the provision of a free appropriate public education to a student.

6. Before having the opportunity for a due process hearing, what steps must be taken to try to resolve the complaint?

Before having the opportunity for a due process hearing there is a 30 day resolution period. This time period allows you and the public agency time to try to resolve the dispute. Either you or the public agency may agree to attempt to resolve the dispute using mediation, or the public agency must schedule a resolution meeting, unless both parties agree to waive the meeting.

For more information regarding the mediation process, please refer to the procedural safeguards document, or the *Parent's Guide to Frequently Asked Questions about Special Education Mediation*.

7. What is a Resolution Meeting?

The resolution meeting provides an opportunity for you and the public agency to resolve the disagreement prior to the initiation of a due process hearing by discussing the facts that form the basis of the complaint and possible solutions.

8. Who can attend the Resolution Meeting?

You and the public agency determine who is appropriate to attend the resolution meeting. You, relevant members of the IEP team, and a public agency representative who has decision-making authority must attend the resolution meeting. Other participants may include your child, your advocate, or your attorney. However, if an attorney accompanies you, the public agency's attorney may also attend.

9. Do I need to ask for a Resolution Meeting?

No. Whenever a due process complaint is filed by a parent, the public agency must arrange for a Resolution Meeting unless the parties agree in writing to waive the Resolution Meeting or the parties agree to attempt to resolve the disagreement through mediation. If the public agency filed the due process complaint, a Resolution Meeting is not required. The Resolution Meeting is not required when the public agency files a complaint because it is assumed that the public agency has already tried to resolve the disagreement.

10. When must the Resolution Meeting be held?

The public agency is required to hold the resolution meeting within 15 days of receiving the due process complaint from you (unless the complaint meets the requirements for an expedited hearing; see question #13). If the public agency fails to hold the resolution meeting within 15 days of receiving your complaint or fails to participate in the meeting, you may contact the Office of Administrative Hearings and request the due process hearing timeline immediately begin.

11. What if I fail to attend the Resolution Meeting?

If the public agency is unable to obtain your participation at the resolution meeting after reasonable efforts have been made, the public agency may request that an administrative law judge dismiss your complaint. If the complaint is dismissed, no due process hearing will be conducted regarding that specific complaint.

12. How long do we have to try to resolve the disagreement?

Generally, you and the public agency have 30 days to resolve the disagreement. However, if you and the public agency agree that progress is being made and you wish to extend the time, it is permissible to do so. In those cases where an expedited hearing must take place, you and the public agency have 7 days to try to resolve the disagreement.

13. What happens if we do not reach an agreement in the Resolution Meeting?

If you and the public agency do not come to resolution, you can agree to extend the resolution period and continue to meet to reach a satisfactory resolution. If both parties agree, you can try to resolve the dispute through mediation; or you may proceed to a due process hearing.

14. What happens at a due process hearing?

A due process hearing is conducted by an administrative law judge from the Office of Administrative Hearings who will take evidence from both parties and make a decision about a dispute. For specific information regarding the due process hearing procedures and rights, please refer to the procedural safeguards document.

15. Do I need an attorney?

No, however, because of the legal nature of the proceedings parents often are represented by counsel but may go to a hearing and represent themselves.

For a list of organizations that provide free or low-cost legal or other services please refer to the *Request for Mediation and Due Process Complaint* form, or the Maryland State Department of Education, Division of Early Intervention and Special Education Services web site at marylandpublicschools.org (choose Divisions, Special Education Early Intervention, then choose Complaint Investigation and Due Process Branch).

16. What is the due process hearing timeline?

If the public agency has not resolved the due process complaint to your satisfaction within 30 days of receiving the complaint (the resolution period), the due process hearing may occur. The administrative law judge then has 45 days to conduct the hearing and issue a final decision. The timeline for issuing the decision can be extended at your or the public agency's request.

17. What are the requirements for an expedited hearing, and how does the due process hearing timeline change?

If your child is not currently enrolled and attending an approved educational program, OR the dispute is over a manifestation determination, or a change in placement due to behaviors resulting in disciplinary actions, the hearing must be held in an expedited manner. In these cases, the resolution meeting must be held within 7 days of the public agency receiving notice of the due process complaint; the hearing shall be held within 20 school days of receipt of the complaint; and the decision shall be issued no later than 10 school days from the completion of the hearing.

18. What is a pre-hearing conference?

A telephone pre-hearing conference is conducted by the Office of Administrative Hearings to discuss details of the dispute for the purpose of determining the number of days needed for the hearing. During this conference you should be prepared to discuss when you and your witnesses will be available for the hearing.

19. What if I want to withdraw my Due Process Complaint?

You may mail, fax, or hand-deliver a signed letter stating that you wish to withdraw your complaint to the Office of Administrative Hearings, and the public agency, as soon as possible. The letter may include information as to why the complaint is being withdrawn.

20. You have not answered all of my questions. Where do I go for help?

First, please refer to the procedural safeguards document given to you by the public agency. Other questions you have may be addressed to the appropriate personnel from the public agency responsible for the student's education, your Partners for Success or Family Support Services Center, the Maryland State Department of Education's Family Support Services Office (410-767-0255), or the Office of Administrative Hearings' Clerk's Office (410-229-4294). You may also wish to consult one of the organizations that provide free or low-cost assistance in special education matters (a list of these organizations is attached to the *Request for Mediation and Due Process Complaint* form).

Funding provided through the Maryland State Department of Education, Division of Early Intervention and Special Education Services from IDEA Part B Grant #HO27A070035A, the U.S. Department of Education, Office of Special Education and Rehabilitative Services. The views expressed herein do not necessarily reflect the views of the U.S. Department of Education or any other Federal agency and should not be regarded as such. The Division of Early Intervention and Special Education Services receives funding from the Office of Special Education Programs, Office of Special Education and Rehabilitative Services, U.S. Department of Education. This information is copyright free. Readers are encouraged to copy and share it, but please credit the Division of Special Education/Early Intervention Services, Maryland State Department of Education.

The Maryland State Department of Education does not discriminate on the basis of race, color, sex, age, national origin, religion, or disability in matters affecting employment or in providing access to programs. For inquiries related to departmental policy, please contact the Equity Assurance and Compliance Branch, Voice (410) 767-0426 or Fax (410) 767-0431. In accordance with the Americans with Disabilities Act (ADA) this document is available in alternative formats, upon request. Contact the Division of Special Education/Early Intervention Services, Maryland State Department of Education at Voice (410) 767-0255, or Fax (410) 333-0664.